

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 201910753	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/15/2019 12:23 AM	Location of Incident: the vicinity of Morris Avenue and East 153rd Street	Precinct: 40	18 Mo. SOL 6/15/2021	EO SOL 1/30/2022	
Date/Time CV Reported Mon, 12/16/2019 12:11 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 12/16/2019 12:11 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Podlovits	19283	957965	PBBX SU
2. POM Austin Hieronymi	24365	957676	PBBX SU
3. SGT Thomas Demkiw	00691	945658	PBBX SU

Officer(s)	Allegation	Investigator Recommendation
A.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw stopped § 87(2)(b)	
B.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw stopped § 87(2)(b)	
C.POM Austin Hieronymi	Discourtesy: Police Officer Austin Hieronymi spoke discourteously to § 87(2)(b)	
D.POM Austin Hieronymi	Discourtesy: Police Officer Austin Hieronymi spoke discourteously to § 87(2)(b)	
E.POM Austin Hieronymi	Abuse: Police Officer Austin Hieronymi frisked § 87(2)(b)	
F.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw frisked § 87(2)(b)	
G.POM Austin Hieronymi	Abuse: Officers searched § 87(2)(b)	
H.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw searched § 87(2)(b)	
I.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits interfered with § 87(2)(b)'s use of a recording device.	
J.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits frisked § 87(2)(b)	
K.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits questioned § 87(2)(b)	
L.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits questioned § 87(2)(b)	
M.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits searched § 87(2)(b)	
N.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits frisked § 87(2)(b)	
O.POM Austin Hieronymi	Abuse: Police Officer Austin Hieronymi refused to provide his name to § 87(2)(b)	
P.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw refused to provide his name to § 87(2)(b)	
Q.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw refused to provide his shield number to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
R.POM Austin Hieronymi	Abuse: Police Officer Austin Hieronymi threatened to arrest § 87(2)(b)	
S.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw threatened to arrest § 87(2)(b)	
T.POM Austin Hieronymi	Force: Police Officer Austin Hieronymi used physical force against § 87(2)(b)	
U.POM Austin Hieronymi	Abuse: Police Officer Austin Hieronymi interfered with § 87(2)(b)'s use of a recording device.	
V.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw failed to provide § 87(2)(b) with a business card.	
W.SGT Thomas Demkiw	Abuse: Sergeant Thomas Demkiw failed to provide § 87(2)(b) with a business card.	
X.POM Richard Podlovits	Abuse: Police Officer Richard Podlovits failed to provide § 87(2)(b) with a business card.	
Y.POM Austin Hieronymi	Abuse: Police Officer Austin Hieronymi failed to provide § 87(2)(b) with a business card.	
Z.SGT Thomas Demkiw	Discourtesy: Sergeant Thomas Demkiw acted discourteously toward § 87(2)(b)	
2A.SGT Thomas Demkiw	Discourtesy: Sergeant Thomas Demkiw acted discourteously toward § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

On December 16, 2019, § 87(2)(b) filed this complaint in person at the CCRB.

On December 15, 2019, at approximately 12:23 a.m., § 87(2)(b) and his twin brother, § 87(2)(b) were walking in the vicinity of Morris Avenue and East 153rd Street in the Bronx when Sgt. Thomas Demkiw, PO Austin Hieronymi, and PO Podlovits, of Patrol Borough Bronx Specialized Unit, stopped them (**Allegations A and B: Abuse of Authority**, § 87(2)(g) PO Hieronymi allegedly told them to put their “fucking hands up” (**Allegations C and D: Discourtesy**, § 87(2)(g) PO Hieronymi and Sgt. Demkiw approached § 87(2)(b) and both officers allegedly frisked him (**Allegation E: Abuse of Authority**, § 87(2)(g) (**Allegation F: Abuse of Authority**, § 87(2)(g) PO Hieronymi and Sgt. Demkiw allegedly placed their hands in § 87(2)(b) s jacket and pants pockets (**Allegations G and H: Abuse of Authority**, § 87(2)(g) § 87(2)(b) took out his phone to record the interaction and PO Podlovits approached him and told him to stop (**Allegation I: Abuse of Authority**, § 87(2)(g) PO Podlovits frisked § 87(2)(b) s chest area (**Allegation J: Abuse of Authority**, § 87(2)(g) PO Podlovits asked if he had pills in his jacket’s inner breast pocket and allegedly asked if he had marijuana in the same pocket (**Allegation K: Abuse of Authority**, § 87(2)(g) (**Allegation L: Abuse of Authority**, § 87(2)(g) PO Podlovits allegedly searched § 87(2)(b) s jacket’s inner breast pocket (**Allegation M: Abuse of Authority**, § 87(2)(g) PO Podlovits further frisked his jacket and pants (**Allegation N: Abuse of Authority**, § 87(2)(g) § 87(2)(b) asked for the names and shield numbers of PO Hieronymi and Sgt. Demkiw. PO Hieronymi provided his shield number and allegedly refused to provide his name (**Allegations O: Abuse of Authority**, § 87(2)(g) Sgt. Demkiw allegedly did not provide his name or shield number (**Allegations P and Q: Abuse of Authority**, § 87(2)(g) § 87(2)(b) entered the street to take a photograph of the police vehicle and PO Hieronymi and Sgt. Demkiw allegedly threatened to arrest him if he did not return to the sidewalk (**Allegations R and S: Abuse of Authority**, § 87(2)(g) § 87(2)(b) continued trying to take a photograph and PO Hieronymi allegedly pushed him toward the sidewalk to prevent him from taking the photograph (**Allegation T: Force**, § 87(2)(g) (**Allegation U: Abuse of Authority**, § 87(2)(g) PO Podlovits then returned to the vehicle and § 87(2)(b) and § 87(2)(b) walked away. No officer offered or provided § 87(2)(b) or § 87(2)(b) business cards (**Allegation V-X: Abuse of Authority**, § 87(2)(g) (**Allegation Y: Abuse of Authority**, § 87(2)(g) After § 87(2)(b) and § 87(2)(b) crossed the street at the intersection, officers drove by and Sgt. Demkiw allegedly displayed his middle finger to them (**Allegation Z and AA: Discourtesy**, § 87(2)(g)

§ 87(4-b) § 87(2)(g)

No arrests were made and no summonses were issued.

Exterior surveillance footage was obtained from the Wonder Wash Laundromat and Fine Fare Supermarket, both located at 675 Morris Avenue, and a residential building located at 635-655 Morris Avenue in the Bronx (BR 01-06). Cellphone footage was obtained from § 87(2)(b) and § 87(2)(b) (BR 07-08).

BWC footage was obtained from the NYPD Legal Bureau (BR 09-10).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Thomas Demkiw stopped § 87(2)(b)

Allegation B – Abuse of Authority: Sergeant Thomas Demkiw stopped § 87(2)(b)

§ 87(2)(g)

Footage from exterior camera 15 at the Wonder Wash Laundromat captures § 87(2)(b) and § 87(2)(b) before they were approached by the officers (BR 01). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 0:00 to 1:27, § 87(2)(b) and § 87(2)(b) are not depicted. At 1:28, § 87(2)(b) and § 87(2)(b) exit the residential apartment building near the top of the frame and walk next to each other toward the camera. § 87(2)(b) on the left side of the frame, appears to pull his pants up at his hips upon exiting. He then rests his hands in his jacket pockets. § 87(2)(b) walks with his hands in his jacket pockets until 1:40, at which point it appears he pulls out and handles a cellphone. Any head-turning by either individual is not clearly depicted, possibly due to poor video quality. The distance between the two individuals and the angles of their bodies appear to remain consistent throughout their depiction. Neither is depicted turning toward the building. At 1:51, they exit at the bottom of the frame. At 1:34, Sgt. Demkiw, PO Hieronymi, and PO Podlovits pass by § 87(2)(b) and § 87(2)(b) in an unmarked vehicle on the opposite side of the street. At 1:43, the vehicle makes a U-turn at the top of the frame to drive in the same direction as § 87(2)(b) and § 87(2)(b). At 2:00, the vehicle exits at the bottom of the frame.

Footage from exterior camera 10 at the Fine Fare Supermarket captures the officers interacting with § 87(2)(b) and § 87(2)(b) (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 23:20, § 87(2)(b) and § 87(2)(b) enter at the top of the frame as Sgt. Demkiw, PO Hieronymi, and PO Podlovits pull up alongside them in their vehicle. At 23:25, PO Hieronymi exits the front passenger seat and approaches § 87(2)(b) and § 87(2)(b). § 87(2)(b) and § 87(2)(b) slow down and walk approximately eight more steps forward until both stop. At 23:32, PO Podlovits first appears on screen crossing the front of the police vehicle. At 23:34, PO Hieronymi approaches § 87(2)(b). At 23:37, PO Podlovits approaches § 87(2)(b). At 23:39, Sgt. Demkiw first appears on screen crossing the front of the police vehicle.

Footage from Sgt. Demkiw's BWC partially captures these allegations (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 0:00 to 0:48, Sgt. Demkiw drives a vehicle, making a U-turn and stopping before exiting. From 0:48 to 0:55, he walks around the front of the vehicle and PO Hieronymi and PO Podlovits are depicted standing in front of § 87(2)(b) and § 87(2)(b). From 0:55 to 1:03, Sgt. Demkiw approaches PO Hieronymi, who is physically securing § 87(2)(b) in front of a plate glass window.

Footage from PO Podlovits' BWC also captures these allegations (BR 10). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 0:00 to 0:28, PO Podlovits sits in a vehicle behind Sgt. Demkiw, who makes a U-turn, drives briefly, and stops, and PO Podlovits exits the vehicle. From 0:28 to 0:36, PO Podlovits walks around the front of the vehicle to PO Hieronymi, who appears to briefly speak with § 87(2)(b) before turning toward § 87(2)(b). PO Podlovits keeps walking and at 0:42, stands in front of § 87(2)(b) as PO Hieronymi walks with § 87(2)(b) toward a plate glass window. § 87(2)(b) stands still.

§ 87(2)(b) stated that he and § 87(2)(b) exited their sister's apartment building after being inside for at least 30 minutes (BR 11). § 87(2)(b) wore an open puffy jacket over a hoodie and fitted sweatpants. In his right lower jacket pocket were a work ID card and a packet of gum and in his left lower jacket pocket were two cigarettes and a lighter. § 87(2)(b) wore all black, including a puffy Superdry jacket. § 87(2)(b) and § 87(2)(b) walked approximately half a block, speaking to each other while holding their cellphones. The block was very well-lit by streetlights. Sgt. Demkiw, PO Hieronymi, and PO Podlovits passed by them and PO Hieronymi, in the driver's seat, craned his neck toward the brothers out of the driver's window. § 87(2)(b) observed the vehicle make a U-turn behind him. The vehicle pulled up next to him and § 87(2)(b) and all three officers exited. PO Hieronymi told both of them to stop and put their hands up. During the incident, PO Hieronymi explained to § 87(2)(b) that he and § 87(2)(b) were stopped because they matched the descriptions of suspects in a recent fight reported nearby.

§ 87(2)(b) provided consistent testimony to § 87(2)(b) barring the following points (BR 12-13). He wore a solid black “flat jacket,” described as slim-fitting and not puffy and slim-fit sweatpants. He had a glassine envelope containing 3.5 grams of marijuana and a pill vial in the inner breast pocket of his jacket. There was no bulge protruding from his chest. The jacket and the pocket were both fully zipped. § 87(2)(b) also wore a “flat jacket.” As the police vehicle passed § 87(2)(b) and § 87(2)(b) the driver and back passenger watched them. § 87(2)(b) looked back at one point to see that the vehicle made a U-turn behind them. All three officers exited and told § 87(2)(b) and § 87(2)(b) to stop and put their hands up.

Sgt. Demkiw, the operator of the police vehicle, stated shootings were an active crime condition for the area surrounding incident location (BR 14). As Sgt. Demkiw drove past East 153rd Street, PO Hieronymi, the front passenger, or PO Podlovits, sat behind the driver, told Sgt. Demkiw to pull the car around as they just observed two individuals walking southbound on Morris Avenue, one of whom adjusted their waistband. Sgt. Demkiw did not know if both of his officers made that observation and no further observations were uttered by officers. Sgt. Demkiw turned over his shoulder and observed § 87(2)(b) or § 87(2)(b) angling his body away from the police. The same individual looked over his shoulder to watch them. Sgt. Demkiw did not recall if this was a repeated movement or for how long he watched the vehicle. His hands were in front of his person. Sgt. Demkiw did not know what he was doing with his hands or if his arms were moving. § 87(2)(b) and § 87(2)(b) walked next to each other. Sgt. Demkiw did not recall which one of the two was the subject of his own observations or of the initial observations by PO Hieronymi or PO Podlovits. Sgt. Demkiw watched § 87(2)(b) and § 87(2)(b) for a couple of seconds and only made notable observations of one of them. Based on an officer’s uttered observation of a waistband adjustment and his own observations of one of the individuals blading his body and having his hands in front of his body, Sgt. Demkiw believed he was possibly concealing a firearm. This was the only suspicion of criminality he suspected of either § 87(2)(b) and § 87(2)(b). Sgt. Demkiw made a U-turn and made no additional observations. PO Hieronymi and PO Podlovits left the vehicle simultaneously and identified themselves as police officers, stopping § 87(2)(b) and § 87(2)(b) from walking. Sgt. Demkiw initially stayed in the vehicle in case § 87(2)(b) or § 87(2)(b) tried to flee. Sgt. Demkiw exited the vehicle a couple seconds after his officers as neither § 87(2)(b) nor § 87(2)(b) tried to flee. He never provided any supervisory instruction. Sgt. Demkiw recorded in his memo book that § 87(2)(b) had “a large bulge in the front of the waistband” (BR 15). He explained in his interview that he based that notation on the related Stop, Question, and Frisk report and was thus based on the observations of the preparing officer, PO Hieronymi, not his own. When presented the above-referenced laundromat footage, Sgt. Demkiw observed two individuals and a car making a U-turn in the background. He could not say for sure that the two individuals were involved in the incident or the vehicle was his own, but stated it was consistent with the incident. He could not identify any body-angling and identified both of them as looking over their shoulder.

PO Hieronymi provided consistent testimony to Sgt. Demkiw barring the following points (BR 16). § 87(2)(b) appeared to have a bulge in the front waistband area and made eye contact with PO Hieronymi as the vehicle passed him. The bulge was bulky, but PO Hieronymi could not speak to its shape or size. The bulge was completely covered by clothing and he did not recall through which or through how many layers of clothing the bulge appeared. § 87(2)(b) maintained eye contact and turned his head around toward the vehicle as it passed. He moved his arms in front of his body and appeared to adjust his waistband near the bulge as he angled his body away from officers. In light of these observations in a shooting-prone area, PO Hieronymi thought § 87(2)(b) might be concealing a firearm in the front of his waistband. He only observed § 87(2)(b) walking without any notable behavior. PO Hieronymi shared his observations with his partners and did not recall how they responded. He did not know if Sgt. Demkiw or PO Podlovits made the same observations. All three officers exited to speak with § 87(2)(b) and § 87(2)(b) announcing themselves as police to initiate the stop. PO Hieronymi’s memo book notation of his observations was consistent with his testimony (BR 17). When presented the above-referenced laundromat

footage, PO Hieronymi did not recognize the two individuals due to the quality of the footage but believed it to be consistent with the incident. He could not say which of the two individuals was the subject of his initial observations. He identified § 87(2)(b) as adjusting his waistband upon entering the frame and as he walked toward the camera, he did “something,” but PO Hieronymi believed that due to being in a moving vehicle, this appeared to officers to be body-blading but was in fact something different that he could not describe. At approximately 1:42, he identified § 87(2)(b) turning to look toward the street. He could not identify any body-angling in the footage.

PO Podlovits provided consistent testimony to Sgt. Demkiw barring the following points (BR 18). PO Podlovits observed § 87(2)(b) and § 87(2)(b) look at the police vehicle and both made eye contact with PO Podlovits. § 87(2)(b) adjusted his waistband and moved away from § 87(2)(b) while § 87(2)(b) moved toward the curb next to a parked vehicle. This, in addition to being in a shooting-prone area, indicated to PO Podlovits that § 87(2)(b) might have a firearm and § 87(2)(b) was distancing himself so as not to associate himself with § 87(2)(b). He discussed his observations with Sgt. Demkiw and PO Hieronymi and both of them stated they made the same observations. As Sgt. Demkiw drove the vehicle to approach § 87(2)(b) and § 87(2)(b) PO Podlovits observed one of them sharply looking over his shoulder at the vehicle and § 87(2)(b) brought his left shoulder forward and away from the vehicle. There were no passers-by for him to avoid or open store fronts for him to inspect so PO Podlovits believed he was trying to obscure the front of his body from police, adding further to his suspicion that § 87(2)(b) was carrying a firearm in his waist. He did not recall what Sgt. Demkiw did or if he ever left the vehicle. Officers initially only stopped § 87(2)(b) but § 87(2)(b) also stopped walking upon their initial approach. On the sidewalk at some point, § 87(2)(b) turned toward PO Podlovits which revealed on the left side of his chest a cylindrical outline, approximately 4” to 4.5” by 1.5”, appearing to PO Podlovits to be a knife. This indicated to PO Podlovits that § 87(2)(b) was possibly carrying a knife, so he was no longer free to leave. In his memo book, PO Podlovits recorded no observations he made of § 87(2)(b) and described his own observations of § 87(2)(b)’s chest following the stop of § 87(2)(b) and the officer’s subsequent investigative steps taken with § 87(2)(b) (BR 19). When presented the above-referenced laundromat footage, PO Podlovits recognized § 87(2)(b) and § 87(2)(b). He identified § 87(2)(b) as adjusting his waistband and raising his pants up when moving away from the building and putting his hands back in his pockets when noticing police. PO Podlovits recalled them crossing the street and hugging the building approximately five to ten seconds prior to the start of that portion of the footage (1:27) which added to his suspicion of criminality. PO Podlovits was presented footage from 1:00 to 1:27, and stated he recalled them crossing the street but he did not view that in the footage and stated it might have been due to a shadow. At around 1:36, PO Podlovits identified a “stutter-step” and a “subconscious separation” as § 87(2)(b) and § 87(2)(b) looked behind them. It appeared that, as police pass them, § 87(2)(b) angled his body.

Stop, Question, and Frisk report § 87(2)(b) prepared by PO Hieronymi regarding this incident indicates that two unknown individuals were stopped in a shooting-prone location after a subject appear to adjust an object in his front waistband area and “blade” (angle) his body away from police while making eye contact with PO Hieronymi, making it appear that he was concealing a possible firearm in his front waistband area (BR 20). Officers observed the two individuals for one minute before stopping them. Sgt. Demkiw approved the report.

A forcible stop and detention of an individual must be based on a reasonable suspicion that a particular person has committed, is committing or is about to commit a crime People v. DeBour, 40 N.Y.2d 210 [1976] (BR 21). An officer lacked reasonable suspicion when he observed an individual walk past his unmarked police vehicle and adjust his clothing around a bulge in the center of his waistband. The officer was unable to describe the bulge in any further detail. These observations were readily susceptible of an innocent as well as a guilty explanation, and therefore were not sufficient to permit the police to forcibly detain the individual People v. Stevenson, 7 A.D.3d 820 [2004] (BR 22). In a separate case, two officers in plainclothes observed an individual

in a high-crime area with a bulge under the front of an individual's waistband. The individual looked at officers, quickly walked away and as officers followed him in an unmarked police vehicle, he looked back over his shoulder, adjusted his waistband, and increased his pace. The court ruled that the individual's rapid pace and looking over his shoulder at plainclothes officers did not bolster officers' initial observations of a bulge to a reasonable suspicion People v. Towers, 49 A.D.2d 839 [1975] (BR 23).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy: Police Officer Austin Hieronymi spoke discourteously to § 87(2)(b).

Allegation D – Discourtesy: Police Officer Austin Hieronymi spoke discourteously to § 87(2)(b).

No footage with audio was available to analyze these allegations.

§ 87(2)(b) alleged that when PO Hieronymi exited the vehicle, he told him and § 87(2)(b) to stop and, "Put your fucking hands up."

§ 87(2)(b) stated that all three officers in general told them to stop and put their hands up. It was possible the officers used profanity at this point but § 87(2)(b) did not specifically recall.

PO Hieronymi stated that all three officers exited the vehicle together and announced themselves as police. He did not recall any officer stating, "Put your fucking hands up."

PO Podlovits did not hear PO Hieronymi state, "Put your fucking hands up."

Sgt. Demkiw stated that he left the vehicle a couple seconds after PO Hieronymi and PO Podlovits did so. Both officers identified themselves as police officers while approaching § 87(2)(b) and § 87(2)(b). Sgt. Demkiw did not hear them state, "Put your fucking hands up."

§ 87(2)(g)

Allegation E – Abuse of Authority: Police Officer Austin Hieronymi frisked § 87(2)(b).

Footage from exterior camera 10 at the Fine Fare Supermarket captures this allegation (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 23:45 to 24:11, PO Hieronymi holds § 87(2)(b)'s jacket near his hips and frisks § 87(2)(b)'s coat pockets, back of waistband, backs of his upper legs, right jacket pocket again, and the backs of his legs again. In between the frisk of § 87(2)(b)'s coat pockets and the back of his waistband, PO Hieronymi places his left hand on § 87(2)(b)'s chest. At 23:50, Sgt. Demkiw stands in front of § 87(2)(b) and to PO Hieronymi's right after walking from the vehicle. At 23:56, Sgt. Demkiw grabs § 87(2)(b)'s right upper arm and lets go at 24:11.

Footage from § 87(2)(b)'s cellphone also captures this frisk (BR 08). There are no on-screen timestamps and the durational timestamp will be referenced. At 0:05, PO Hieronymi appears

to frisk § 87(2)(b)'s right jacket pocket. He then guides § 87(2)(b) away from the storefront and lifts his jacket from his waist, pats the back of his waist, frisks his right back pants pocket and left leg, and then squeezes his right jacket pocket again.

§ 87(2)(b) stated PO Hieronymi and Sgt. Demkiw grabbed his right and left forearms, respectively. PO Hieronymi held § 87(2)(b)'s arm as he frisked the front of his torso and squeezed his lower jacket pockets. PO Hieronymi frisked the front and back of § 87(2)(b)'s waist and squeezed his rear pants pocket. PO Hieronymi concluded by frisking his upper legs.

§ 87(2)(b) stated PO Hieronymi frisked the full length of the right side of § 87(2)(b)'s body while Sgt. Demkiw frisked the other side of his body as each officer secured § 87(2)(b) in place by his upper arms.

PO Hieronymi stated that once next to § 87(2)(b) he observed the front of § 87(2)(b)'s waistband was bulky under his shirt or jacket but did not recall noticing its size or shape. PO Hieronymi frisked the front of the waistband where he observed the bulge and the pockets of his jacket. PO Hieronymi either felt or pulled out a cellphone from one of § 87(2)(b)'s jacket pockets, which was the source of the bulge. When presented the above-referenced footage supermarket footage, PO Hieronymi observed himself also frisking the back of § 87(2)(b)'s waistband. He did so as, due to § 87(2)(b)'s initial waistband adjustment, he could have moved a firearm to the other side of his waistband. PO Hieronymi did not observe any bulges there. He also identified himself frisking § 87(2)(b)'s legs because, based on his experience of such events occurring in other stops, he believed it possible a gun in § 87(2)(b)'s waistband could have fallen down his pants. He did not observe any bulges on § 87(2)(b)'s legs. PO Hieronymi observed himself put his hand on § 87(2)(b)'s chest and denied frisking it, explaining he did so to secure § 87(2)(b).

Sgt. Demkiw stated PO Hieronymi started frisking § 87(2)(b) just before he himself exited the vehicle. He approached PO Hieronymi and § 87(2)(b) at which point the officer was frisking the front of § 87(2)(b)'s waistband. He did not look at § 87(2)(b)'s waistband and thus observed no bulges there. Sgt. Demkiw did not recall any other areas PO Hieronymi frisked. Sgt. Demkiw did not know why PO Hieronymi was frisking the waistband and recall nothing being discovered in the waistband. Sgt. Demkiw stood next to PO Hieronymi as there seemed to be much tension between the officer and § 87(2)(b) and he wanted to make sure it did not escalate. He did not assist in any other way and did not recall frisking or holding § 87(2)(b).

PO Podlovits stated that when he got on the sidewalk, he was not in a position to observe any bulges on § 87(2)(b)'s person since PO Hieronymi continuously stood in between PO Podlovits and § 87(2)(b) and he did not observe any frisks by PO Hieronymi or Sgt. Demkiw.

A frisk of an individual must be based on a reasonable suspicion that a particular person has committed, is committing or is about to commit a crime and that the officer is in danger by virtue that the individual is armed People v. DeBour, 40 N.Y.2d 210 [1976]. An officer lacked reasonable suspicion that an individual was carrying a weapon when he observed the individual adjust his clothing around an undefinable bulge in the center of his waistband People v. Stevenson, 7A.D.3d 820 [2004]. In a separate case, two officers in plainclothes observed an individual in a high-crime area with a bulge under the front of an individual's waistband. The individual looked at officers, quickly walked away and as officers followed him in an unmarked vehicle, he looked back over his shoulder, adjusted his waistband, and increased his pace, and officers stopped him. In light of all this, officers lacked reasonable suspicion that he was carrying a weapon People v. Towers, 49 A.D.2d 839 [1975].

§ 87(2)(g)

Allegation F – Abuse of Authority: Sergeant Thomas Demkiw frisked § 87(2)(b)

Footage from exterior camera 10 at the FineFare Supermarket captures the entire frisk of § 87(2)(b) (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 23:45 to 24:11, PO Hieronymi frisks § 87(2)(b). At 23:50, Sgt. Demkiw stands in front of § 87(2)(b) and to PO Hieronymi's right after walking from the vehicle. At 23:56, Sgt. Demkiw grabs § 87(2)(b)'s right upper arm and lets go at 24:11.

Footage from Sgt. Demkiw's BWC also captures the frisk of § 87(2)(b) (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:02, Sgt. Demkiw approaches § 87(2)(b)'s left side as PO Hieronymi frisks him. Sgt. Demkiw's right hand is never depicted as the camera is obstructed by his clothing. At 1:14, Sgt. Demkiw's left hand is briefly depicted and does not make contact with § 87(2)(b). PO Hieronymi finishes frisking § 87(2)(b) at 1:24 and officers walk away.

§ 87(2)(b) stated Sgt. Demkiw frisked the length of the left side of § 87(2)(b)'s body while PO Hieronymi frisked the other side of his body as each officer secured § 87(2)(b) in place by his upper arms.

§ 87(2)(b) stated that Sgt. Demkiw never frisked him.

Sgt. Demkiw did not recall frisking § 87(2)(b).

PO Hieronymi and PO Podlovits did not observe Sgt. Demkiw frisk § 87(2)(b).

§ 87(2)(g)

Allegation G – Abuse of Authority: Police Officer Austin Hieronymi searched § 87(2)(b)

Allegation H – Abuse of Authority: Sergeant Thomas Demkiw searched § 87(2)(b)

Footage from exterior camera 10 at the Fine Fare Supermarket addresses these allegations (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 23:45 to 24:11, PO Hieronymi frisks § 87(2)(b). At 23:56, Sgt. Demkiw grabs § 87(2)(b)'s right upper arm and he lets go at 24:11. No officer is depicted reaching into any of § 87(2)(b)'s pockets.

Footage from Sgt. Demkiw's BWC is also relevant (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. From 1:02 to 1:24, PO Hieronymi frisks § 87(2)(b). No officer is depicted reaching into any of § 87(2)(b)'s pockets.

Footage from § 87(2)(b)'s cellphone is also relevant (BR 08). There is no on-screen timestamp and the durational timestamp will be referenced. From 0:05 to 0:24, PO Hieronymi frisks § 87(2)(b) as Sgt. Demkiw holds one of his arms. No officer is depicted reaching into any of § 87(2)(b)'s pockets.

§ 87(2)(b) alleged that after PO Hieronymi squeezed his jacket pockets, he reached inside both pockets. Sgt. Demkiw also reached into his left jacket pocket. After frisking § 87(2)(b)'s upper legs, PO Hieronymi reached inside his front pants pockets. No officer removed anything from § 87(2)(b)'s pockets.

§ 87(2)(b) stated Sgt. Demkiw reached into the left back pocket of § 87(2)(b)'s pants and both pockets of his jacket. PO Hieronymi reached into at least one of the jacket pockets.

PO Hieronymi did not recall reaching into any of § 87(2)(b)'s pockets or any observations he made of Sgt. Demkiw.

Sgt. Demkiw denied searching § 87(2)(b) and did not recall PO Hieronymi reaching into any of his pockets.

PO Podlovits observed no searches by PO Hieronymi and did not recall if Sgt. Demkiw ever left the vehicle.

§ 87(2)(g)

Allegation I – Abuse of Authority: Police Officer Richard Podlovits interfered with § 87(2)(b)'s use of a recording device.

Footage from § 87(2)(b)'s cellphone captures this allegation (BR 08). There is no on-screen timestamp and the durational timestamp will be referenced. At 0:02, § 87(2)(b) directs his cellphone camera at PO Podlovits' face. PO Podlovits states, "Stop that." § 87(2)(b) continues to record the incident for an approximate minute and a half more.

§ 87(2)(b) stated he began recording the incident with his cellphone when PO Podlovits approached him. PO Podlovits told him to stop recording. § 87(2)(b) refused and PO Podlovits made no further attempts to prevent him from recording.

§ 87(2)(b) did not allege that any officer interfered with any recording by § 87(2)(b).

PO Podlovits stated § 87(2)(b) recorded almost the entire incident on his cellphone after removing it from his right jacket pocket. § 87(2)(b) put the phone directly in front of PO Podlovits' face which presented safety concerns. PO Podlovits was afraid § 87(2)(b) might use it to hit him in the face and mentioned a general concern for guns disguised as cellphones. He never told § 87(2)(b) to stop recording or interfered with his recording other than keeping it away from his face for safety reasons.

PO Hieronymi did not recall § 87(2)(b) ever using his phone to record the incident.

Sgt. Demkiw did not recall PO Podlovits ever interfering with § 87(2)(b)'s recording.

§ 87(2)(g)

Allegation J – Abuse of Authority: Police Officer Richard Podlovits frisked § 87(2)(b)

Footage from PO Podlovits' BWC captures this allegation (BR 10). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 0:47, PO Podlovits then grabs the left breast of § 87(2)(b)'s jacket with his right hand and shakes it several times.

§ 87(2)(b) stated that as his hands were in the air, PO Podlovits patted his sweatpants pockets, the front of his torso, and the outside of his inner right breast pocket. PO Podlovits told § 87(2)(b) that the pill bottle appeared to be a knife from his initial observations. § 87(2)(b) told the investigation that there was no observable indication he was carrying anything in his inner right breast pocket.

§ 87(2)(b) did not observe § 87(2)(b) being frisked by PO Podlovits.

PO Podlovits stated that as PO Hieronymi began interacting with § 87(2)(b) § 87(2)(b) began gravitating toward PO Hieronymi on his right side, where he carries his firearm, and tried to interject. § 87(2)(b) had his hands in his front jacket pockets while stepping into PO Hieronymi's immediate vicinity. § 87(2)(b) angled his body away from PO Podlovits toward PO Hieronymi. PO Podlovits believed this was either for § 87(2)(b) to conceal the front of his body from him or to focus on PO Hieronymi and § 87(2)(b). Concerned for PO Hieronymi's safety, PO Podlovits told § 87(2)(b) to step back and take his hands out of his pockets. § 87(2)(b) did not step back, so PO Podlovits put his hand up across his chest. § 87(2)(b) turned toward PO Podlovits and revealed an outline on the left side of his chest with appearance of an object weighing down a pocket there. The outline of the object had a cylindrical feature, resembling that of a knife. It was approximately 4'' to 4.5'' by 1.5'' in a vertical orientation. As PO Podlovits believed it to be a knife, he put his hand on top of it, grabbed and shook it, and heard some pills shaking around as he moved it.

PO Hieronymi made no notable observations of § 87(2)(b) and did not recall observing PO Podlovits frisk him.

Sgt. Demkiw stated that § 87(2)(b) wore a heavy jacket which obscured any potential bulges and he made no notable observations of § 87(2)(b). Sgt. Demkiw did not know if PO Podlovits frisked him.

A pocket bulge can be caused by a number of innocuous objects. Without anything in the character or location of the bulge to suggest that an individual is carrying a weapon and in absence of other indications of being armed, such as furtive movements toward the bulge, an officer lacks reasonable suspicion to conduct a frisk of the pocket People v. Hill, 262 A.D.2d 870 [1999] (BR 24).

§ 87(2)(g)

Allegation K – Abuse of Authority: Police Officer Richard Podlovits questioned § 87(2)(b)

Footage from PO Podlovits' BWC captures this allegation (BR 10). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:01, as PO Podlovits holds the outside of § 87(2)(b)'s breast pocket, he asks § 87(2)(b) "What is it? Pills?" § 87(2)(b) states, "Yes, it's my pills."

§ 87(2)(b) stated that as his hands were in the air, PO Podlovits squeezed the outside of his inner breast pocket and asked § 87(2)(b) "Is that a pill bottle? Is that marijuana?" § 87(2)(b) confirmed both.

§ 87(2)(b) stated that, as he interacted with PO Hieronymi and Sgt. Demkiw, he heard PO Podlovits ask § 87(2)(b) what was in his inner breast pocket. § 87(2)(b) told him it was medication and PO Podlovits explained that it resembled a knife bulging from chest.

PO Podlovits stated that when he heard the sounds of pills in a bottle as he frisked § 87(2)(b) due to the perceived cylindrical bulge, PO Podlovits asked if it was a pill bottle and § 87(2)(b) confirmed it was.

PO Hieronymi made no notable observations of § 87(2)(b) and did not recall observing PO Podlovits ask § 87(2)(b) any questions.

Sgt. Demkiw did not know if PO Podlovits anyone any questions.

An officer who noticed an undefined bulge in an individual's jacket pocket, believing it looked like a weapon, had a founded suspicion to ask the individual what was in his pocket. People v. Niles, 237 A.D.2d 537 [1997] (BR 35).

§ 87(2)(g)

Allegation L – Abuse of Authority: Police Officer Richard Podlovits questioned § 87(2)(b)

Footage from PO Podlovits' BWC captures this allegation (BR 10). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:01, as PO Podlovits holds the outside of § 87(2)(b)'s breast pocket, he asks § 87(2)(b) "What is it? Pills?" § 87(2)(b) states, "Yes, it's my pills."

§ 87(2)(b) stated that as his hands were in the air, PO Podlovits squeezed the outside of his inner breast pocket and asked § 87(2)(b) "Is that a pill bottle? Is that marijuana?" § 87(2)(b) confirmed both as he was carrying a glassine envelope of marijuana in that pocket.

§ 87(2)(b) stated that, as he interacted with PO Hieronymi and Sgt. Demkiw, he heard PO Podlovits ask § 87(2)(b) what was in his inner breast pocket. § 87(2)(b) told him it was medication and PO Podlovits explained that it resembled a knife bulging from chest.

PO Podlovits stated that when he heard the sounds of pills as he frisked § 87(2)(b) due to the perceived cylindrical bulge, PO Podlovits asked if it was a pill bottle and § 87(2)(b) confirmed it was.

PO Hieronymi did not recall PO Podlovits ask § 87(2)(b) any questions.

Sgt. Demkiw did not know if PO Podlovits asked anyone any questions.

§ 87(2)(g)

Allegation M – Police Officer Richard Podlovits searched § 87(2)(b)

Footage from PO Podlovits' BWC captures this allegation (BR 10). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 0:47, PO Podlovits initiates physical contact with § 87(2)(b) by grabbing the left breast of his jacket with his right hand and shaking it several times. He keeps holding it until 1:04 when PO Podlovits moves his hand along the sides of § 87(2)(b)'s upper body to his legs. At 1:07, PO Podlovits squeezes § 87(2)(b)'s front right pants pocket and the runs his left hand along the length of § 87(2)(b)'s left leg. At 1:14, PO Podlovits finishes his frisk and ceases physical contact with § 87(2)(b). § 87(2)(b)'s jacket is completely zipped up the entire time and no search of his inner breast pocket is depicted.

§ 87(2)(b) stated that his jacket and inner breast pocket were both initially fully zipped closed and that after confirming he had medication and marijuana in his inner breast pocket, PO Podlovits unzipped his jacket, unzipped his inner right pocket, and looked inside. He did not reach in or remove anything from § 87(2)(b)'s pockets.

§ 87(2)(b) stated that after he heard PO Podlovits ask § 87(2)(b) what he had in his inner breast pocket and § 87(2)(b) told him medication, PO Podlovits reached into the pocket and pulled out a typical orange vial for prescription drugs. PO Podlovits asked § 87(2)(b) if it was the medication he referred to and § 87(2)(b) confirmed.

PO Podlovits did not recall if § 87(2)(b)'s jacket was opened or closed when officers approached him and did not recall himself unzipping any secured zippers on § 87(2)(b)'s jacket. He was never able to observe the interior of § 87(2)(b)'s inner breast pocket.

PO Hieronymi did not observe PO Podlovits search § 87(2)(b)

Sgt. Demkiw stated that he did not observe PO Podlovits search § 87(2)(b)

§ 87(2)(g)

Allegation N – Police Officer Richard Podlovits frisked § 87(2)(b)

Footage from PO Podlovits' BWC captures this allegation (BR 10). The durational timestamp of the video will be referenced, not the on-screen timestamp. There is no audio until 1:00. At 0:47, PO Podlovits grabs the left breast of § 87(2)(b)'s jacket with his right hand and shakes it several times. He keeps holding it and at 1:01 asks § 87(2)(b) "What is it? Pills?" § 87(2)(b) states, "Yes, it's my pills." There is apparent wind interference obscuring the audio. At 1:04, PO Podlovits moves his hand along the sides of § 87(2)(b)'s upper body to his legs. At 1:06, § 87(2)(b) states, "I ain't got no weapons." At 1:07, PO Podlovits squeezes § 87(2)(b)'s front right pants pocket and the runs his left hand along the length of § 87(2)(b)'s left leg. No further frisk by PO Podlovits is depicted. At 1:10, § 87(2)(b) who interacts with PO Hieronymi and Sgt. Demkiw to PO Podlovits' left, states, "Keep searching."

§ 87(2)(b)'s cellphone footage captures audio from the incident before PO Podlovits' BWC footage (BR 08). There are no on-screen timestamps and the durational timestamp will be referenced. At 0:01, § 87(2)(b) asks, "What are you searching me for?" PO Podlovits responds, "Do you want me to- Stop that." There is apparent wind interference partially obscuring the audio. No further statements from § 87(2)(b) are audible until after 0:10 when PO Podlovits asks, "What is it? Pills?" and § 87(2)(b) confirms. At 0:15, § 87(2)(b) states he does not have any weapons. At 0:20, § 87(2)(b) tells PO Hieronymi to keep searching and § 87(2)(b) asks PO Podlovits, "What is the probable cause?"

§ 87(2)(b) stated that as his hands were in the air, PO Podlovits frisked and squeezed the front pockets of § 87(2)(b)'s sweatpants, patted the front of his torso, and squeezed the outside of his inner right breast pocket. PO Podlovits also squeezed § 87(2)(b)'s lower front jacket pockets during the frisk. § 87(2)(b) repeatedly protested PO Podlovits' actions and asked the officer what was the "probable cause to stop [him]."

§ 87(2)(b) did not observe any frisk of § 87(2)(b) by PO Podlovits.

PO Podlovits stated that, during his initial frisk of § 87(2)(b)'s jacket, § 87(2)(b) stated, "If you want to frisk/check me, go ahead," with his hands out and up. PO Podlovits took this as consent for a more general frisk. Also, during this initial frisk, § 87(2)(b) moved his hand several times toward his right jacket pocket which indicated he might be concealing something there. Due to § 87(2)(b)'s consent and hand movements, PO Podlovits frisked his right jacket pocket. He did not recall if he frisked any additional parts of his body. He did not recall feeling anything in the pocket. When presented the above-referenced BWC footage, PO Podlovits identified himself as frisking § 87(2)(b)'s legs. He did so because § 87(2)(b) told him to "keep checking." PO Podlovits stated § 87(2)(b) provided consent prior to audio starting in the footage and before he asked about § 87(2)(b)'s pills but after PO Podlovits frisked his breast pocket and right jacket pocket. When presented the above-referenced cellphone footage, PO Podlovits stated § 87(2)(b) provided consent prior to the video starting.

PO Hieronymi did not recall observing PO Podlovits frisk § 87(2)(b).

Sgt. Demkiw did not know if PO Podlovits frisked § 87(2)(b).

A frisk of an individual must be based on a reasonable suspicion that a particular person has committed, is committing or is about to commit a crime and that the officer is in danger by virtue that the individual is armed, and innocuous behavior alone is not adequate basis for reasonable suspicion People v. DeBour, 40 N.Y.2d 210 [1976].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation O – Abuse of Authority: Police Officer Austin Hieronymi refused to provide his name to § 87(2)(b)

Footage from Sgt. Demkiw's BWC captures these allegations (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:23, PO Hieronymi finishes frisking § 87(2)(b) as § 87(2)(b) tells him, "Let me get your badge number when you're

finished, thank you.” PO Hieronymi keeps walking away and § 87(2)(b) states, “No, give me your badge number.” At 1:26, PO Hieronymi states, “24365.” He is not depicted requesting PO Hieronymi’s name in the video or in any other video evidence.

§ 87(2)(b) stated that following his frisk, PO Hieronymi and Sgt. Demkiw let go of him and walked back to their vehicle. He asked PO Hieronymi for his name and shield number approximately ten times as he walked. PO Hieronymi did not initially respond but eventually stated his name and shield number.

§ 87(2)(b) stated that § 87(2)(b) followed PO Hieronymi and Sgt. Demkiw as they walked back to their vehicle and he repeatedly asked for their names. PO Hieronymi never provided his name.

PO Hieronymi did not recall § 87(2)(b) asking for his name or shield number or any interactions Sgt. Demkiw had with § 87(2)(b).

Sgt. Demkiw stated that after he returned to the vehicle, § 87(2)(b) or § 87(2)(b) asked PO Podlovits for his name and shield number, both of which he provided. Neither asked PO Hieronymi for this information.

PO Podlovits did not observe any interactions PO Hieronymi had with § 87(2)(b).

§ 87(2)(g)

Allegation P – Abuse of Authority: Sergeant Thomas Demkiw refused to provide his name to

§ 87(2)(b)

Allegation Q – Abuse of Authority: Sergeant Thomas Demkiw refused to provide his shield number to § 87(2)(b)

Footage from Sgt. Demkiw’s BWC captures these allegations (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:23, PO Hieronymi finishes frisking § 87(2)(b) as § 87(2)(b) tells him, “Let me get your badge number when you’re finished, thank you.” PO Hieronymi keeps walking away and § 87(2)(b) states, “No, give me your badge number.” At 1:26, PO Hieronymi states, “24365.” He is not depicted asking Sgt. Demkiw for any information and does not request PO Hieronymi’s name in the video.

Footage from § 87(2)(b)’s cellphone also captures these allegations (BR 08). There is no on-screen timestamp and the durational timestamp will be referenced. From 0:20 to 0:25, § 87(2)(b) asks twice for PO Hieronymi’s shield number, which he provides. § 87(2)(b) continues interacting with PO Hieronymi, and possibly Sgt. Demkiw, as all three past § 87(2)(b)’s cellphone into the street. Their verbal exchange is largely obscured by the distance they are from the camera and dialogue between § 87(2)(b) and PO Podlovits. At 0:58, it is clear that § 87(2)(b) is still speaking to PO Hieronymi, and possibly Sgt. Demkiw, as he now stands on the curb facing the officers in the street. Their further verbal exchange is similarly obscured as before. At 1:12, § 87(2)(b) asks, “What is yours?,” and PO Podlovits responds with his rank and name.

§ 87(2)(b) stated that following his frisk, PO Hieronymi and Sgt. Demkiw let go of him and walked back to their vehicle. He followed the officers into the street and once PO Hieronymi entered the driver’s seat, § 87(2)(b) asked Sgt. Demkiw for his name and shield number but Sgt. Demkiw ignored him and got into the front passenger seat. § 87(2)(b) was less than a foot away from Sgt. Demkiw as he loudly asked for his information, possibly asking, “What’s your fucking name and badge number?”

§ 87(2)(b) stated that § 87(2)(b) followed PO Hieronymi and Sgt. Demkiw as they walked back to their vehicle and he repeatedly asked for their names. Sgt. Demkiw never provided their names.

Sgt. Demkiw stated that after he returned to the vehicle, § 87(2)(b) or § 87(2)(b) asked PO Podlovits for his name and shield number, both of which he provided. Neither asked Sgt. Demkiw for this information.

PO Hieronymi did not recall any interactions Sgt. Demkiw had with § 87(2)(b).
PO Podlovits did not recall Sgt. Demkiw ever interacting with anyone on scene.

§ 87(2)(g)

Allegation R – Abuse of Authority: Police Officer Austin Hieronymi threatened to arrest § 87(2)(b).

Allegation S – Abuse of Authority: Sergeant Thomas Demkiw threatened to arrest § 87(2)(b).

Footage from § 87(2)(b)'s cellphone addresses these allegations (BR 08). There is no on-screen timestamp and the durational timestamp will be referenced. At 0:32, § 87(2)(b) is depicted in the street next to the police vehicle and he can be heard speaking with PO Hieronymi and Sgt. Demkiw. Their verbal exchange is largely obscured by the distance they are from the camera and dialogue between § 87(2)(b) and PO Podlovits. At 0:40, § 87(2)(b) is depicted hunching in front of the police vehicle as Sgt. Demkiw stands by the right headlight. The camera then largely focuses on PO Podlovits and § 87(2)(b) until 0:57, when § 87(2)(b) is standing on the curb speaking to PO Hieronymi, and possibly Sgt. Demkiw. § 87(2)(b) states, "I didn't commit no crimes. Why can't I go in the street? What did I do?" Their further verbal exchange is similarly obscured as before.

§ 87(2)(b) stated that after PO Hieronymi and Sgt. Demkiw reentered their vehicle via the driver's door and front passenger door, respectively, he walked into the street to the front of the police vehicle to take a photograph of the license plate. PO Hieronymi and Sgt. Demkiw stepped back out of the vehicle and told him to get out of the street or he would be arrested. § 87(2)(b) asked why he would be arrested for trying to take a photograph of a license plate and PO Hieronymi responded, "Get the hell out of the street before I lock you up. I'm not going to tell you again." § 87(2)(b) eventually returned to the sidewalk and was not arrested.

§ 87(2)(b) observed § 87(2)(b) follow PO Hieronymi and Sgt. Demkiw to their vehicle in the street. He did not observe § 87(2)(b) try to take any photographs and did not recall how PO Hieronymi and Sgt. Demkiw responded to § 87(2)(b)'s statements and actions.

PO Hieronymi stated he returned to the vehicle as § 87(2)(b) entered the street and got within three or four feet of PO Hieronymi. PO Hieronymi told § 87(2)(b) to step back and get on the sidewalk out of concern for his own safety due to his compromising position halfway in the vehicle and § 87(2)(b)'s disorderly nature. He did not recall how many times he told § 87(2)(b) to step back before he complied. He did not recall himself or Sgt. Demkiw threaten to arrest § 87(2)(b).

Sgt. Demkiw stated that after returning to the driver's seat of the police vehicle, § 87(2)(b) walked in front of the vehicle and point his phone at it, assumedly taking a photograph. He did not recall any orders by officers for him to get out of the street. He recalled no threats of arrest by any officer.

PO Podlovits did not recall PO Hieronymi or Sgt. Demkiw threaten to arrest § 87(2)(b).

§ 87(2)(g)

Allegation T – Abuse of Authority: Police Officer Austin Hieronymi used physical force against § 87(2)(b)

Footage from exterior camera 10 at the FineFare Supermarket partially captures this allegation (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 24:32, § 87(2)(b) walks to the front passenger door of the vehicle, where PO Hieronymi is. Only his legs are visible under the top of the frame. At 24:37, PO Hieronymi's legs are also visible as he steps away from the vehicle toward § 87(2)(b). From 24:38 to 24:41, PO Hieronymi walks forward as § 87(2)(b) back paces in front of him. PO Hieronymi's right hand is depicted twice going from his side to above the top of the frame. No physical contact is depicted between PO Hieronymi and § 87(2)(b).

Footage from exterior camera 15 at the WonderWash Laundromat partially captures this allegation (BR 01). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 2:42, § 87(2)(b) walks to the front passenger door of the vehicle. At 2:45, PO Hieronymi steps out of the front passenger area and walks toward § 87(2)(b). His right arm raises twice toward § 87(2)(b) who back paces onto the curb as PO Hieronymi walks toward him. Any physical contact is unclear due to poor video quality.

§ 87(2)(b) stated that after PO Hieronymi threatened to arrest him, he continued to try and take a photograph of the license plate. PO Hieronymi approached § 87(2)(b) and pushed him in the chest with one arm toward the sidewalk and yelled at him to get on the sidewalk.

§ 87(2)(b) did not observe PO Hieronymi push § 87(2)(b).

PO Hieronymi did not recall pushing or physically guiding § 87(2)(b) back onto the sidewalk, stating he walked back onto the sidewalk by himself. When presented the above-referenced footage, PO Hieronymi recognized the events and stated he was holding his hand up to direct and instruct § 87(2)(b) back on the sidewalk. He did not recall making any physical contact but stated he could have had his hand on the § 87(2)(b)'s chest or just gesticulating from him to get back.

Sgt. Demkiw did not recall any interaction PO Hieronymi had with § 87(2)(b) in the street and denied any officer pushing him.

PO Podlovits did not recall § 87(2)(b) ever enter the street nor did he observe PO Hieronymi push him.

§ 87(2)(g)

Allegation U – Abuse of Authority: Police Officer Austin Hieronymi interfered with § 87(2)(b)'s use of a recording device.

Footage from exterior camera 10 at the FineFare Supermarket partially captures this allegation (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 24:19, PO Hieronymi steps into the street and is followed by § 87(2)(b) then Sgt. Demkiw. PO Hieronymi goes to the front passenger area of the police vehicle as § 87(2)(b) walks in front of the vehicle. At 24:32, § 87(2)(b) walks to the front passenger door. From 24:38 to 24:41, PO Hieronymi walks forward as § 87(2)(b) back paces away from the vehicle.

Footage from § 87(2)(b)'s cellphone also captures limited interactions between § 87(2)(b) and officers while he is in the street. At 0:32, § 87(2)(b) is depicted in the street next to the police vehicle and he can be heard speaking with PO Hieronymi and Sgt. Demkiw. Their verbal exchange is largely obscured by the distance they are from the camera and dialogue between § 87(2)(b) and PO Podlovits. At 0:40, § 87(2)(b) is depicted hunching in front of the police vehicle as Sgt. Demkiw stands by the right headlight. No physical interaction between § 87(2)(b) and officers is depicted.

§ 87(2)(b) stated that after PO Hieronymi threatened to arrest him, he continued to try and take a photograph of the license plate. PO Hieronymi approached § 87(2)(b) and pushed him in the chest with one arm toward the sidewalk and yelled at him to get on the sidewalk. § 87(2)(b) got onto the sidewalk and did not take a photograph of the vehicle. § 87(2)(b) believed PO Hieronymi pushed him out of the street to prevent him from taking a photograph.

§ 87(2)(b) did not observe § 87(2)(b) attempt to photograph the police vehicle.

PO Hieronymi assumed § 87(2)(b) was recording him after the frisk as § 87(2)(b) pointed a phone at PO Hieronymi. He denied ever interfering with § 87(2)(b)'s recording. He did not recall pushing or physically guiding § 87(2)(b) back onto the sidewalk, stating he walked back onto the sidewalk by himself.

Sgt. Demkiw stated that after returning to the driver's seat of the police vehicle, § 87(2)(b) walked in front of the vehicle and point his phone at it, assumedly taking a photograph. He did not recall any interaction PO Hieronymi had with § 87(2)(b) in the street.

PO Podlovits did not recall § 87(2)(b) try to photograph the vehicle.

§ 87(2)(g)

Allegation V – Abuse of Authority: Sergeant Thomas Demkiw failed to provide § 87(2)(b) with a business card.

Allegation W – Abuse of Authority: Sergeant Thomas Demkiw failed to provide § 87(2)(b) with a business card.

Allegation X – Abuse of Authority: Police Officer Richard Podlovits failed to provide § 87(2)(b) with a business card.

Footage from Sgt. Demkiw's BWC captures these allegations (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:28, § 87(2)(b) asks for PO Hieronymi's card as he walks away. PO Hieronymi tells him he has to go find one, and § 87(2)(b) asks twice more as they both walk toward the vehicle.

Footage from PO Podlovits' BWC captures these allegations (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:16, § 87(2)(b) tells PO Hieronymi, "Give me your card, like you're supposed to." Any additional interaction between § 87(2)(b) and PO Hieronymi is inaudible. At 2:03, as PO Podlovits speaks to § 87(2)(b), § 87(2)(b) comes up and asks PO Podlovits for his information, which he provides. § 87(2)(b) states he is going to the CCRB. At 2:11, § 87(2)(b) states no officer gave him any cards. He then tells the officers to have a good night, states, "Suck a dick. Run down on six black more people, fuck out of here," and walks away from officers. At 2:19, § 87(2)(b) asks for PO Podlovits' name and he provides his name and shield number. § 87(2)(b) tells him he is going to send the video to 1 Police Plaza. PO Podlovits thanks him and § 87(2)(b) and § 87(2)(b) both walk away.

§ 87(2)(b) stated that once PO Hieronymi provided his name and shield number, § 87(2)(b) told him that was not enough, and asked for a business card. PO Hieronymi did not respond and entered the driver's seat of the vehicle. Once § 87(2)(b) returned to the sidewalk after attempting to photograph the police vehicle, § 87(2)(b) asked PO Podlovits for his name and shield number, which PO Podlovits provided, and a business card, which PO Podlovits did not provide. PO Podlovits returned to the backseat of the vehicle. No officer offered or provided any business cards to § 87(2)(b) or § 87(2)(b).

§ 87(2)(b) stated that § 87(2)(b) followed PO Hieronymi and Sgt. Demkiw from the sidewalk to their vehicle while repeatedly asking for their business cards. Neither officer provided their business cards. § 87(2)(b) asked PO Podlovits for his name and business card. PO Podlovits

provided his name and shield number but did not provide a business card. PO Podlovits returned to the vehicle and officers drove away.

Sgt. Demkiw stated that when he returned to the vehicle, he heard § 87(2)(b) or § 87(2)(b) ask PO Podlovits for a business card. He did not know if PO Podlovits provided any, but believed he went into the trunk of the vehicle to find one. Sgt. Demkiw had business cards on his vest carrier, which was under his sweatshirt and body camera. As § 87(2)(b) recorded the vehicle, Sgt. Demkiw began disrobing within the vehicle to access his business cards to provide them. He did not recall anyone requesting one from him, but he intended to provide his. However, § 87(2)(b) and § 87(2)(b) left the scene before Sgt. Demkiw was able to access the compartment in his vest. He did not recall if PO Hieronymi ever offered a business card or if he was ever requested to provide one. Sgt. Demkiw was not sure if any officers advised the individuals, they would have to wait for a business card. Sgt. Demkiw was not sure if any officers provided their command to the individuals. In his memo book, Sgt. Demkiw noted, “male... requested a card and walked away.”

As PO Hieronymi returned to the police vehicle, § 87(2)(b) asked him for a contact card. PO Hieronymi returned to the vehicle with the intention of retrieving a card, which he kept in the open compartment of the front passenger door. He stopped briefly to order § 87(2)(b) back onto the sidewalk and told him he was looking for a business card. While continuing to look for one, § 87(2)(b) and § 87(2)(b) left the scene. This indicated to PO Hieronymi that they no longer wanted any contact with the officers, thereby refusing a card, so he no longer tried to provide a card. PO Hieronymi did not recall if Sgt. Demkiw or PO Podlovits ever offered their own contact cards. In his memo book, PO Hieronymi noted, “While requesting a contact card upon conclusion of stop, subject walked away from police before reporting officer could retrieve one from [sic] him.”

PO Podlovits stated that once he finished frisking § 87(2)(b) § 87(2)(b) asked him if he was done. PO Podlovits confirmed he was, and § 87(2)(b) began leaving the scene with § 87(2)(b). As he did so, § 87(2)(b) requested a business card from PO Podlovits and yelled at him, “Suck my dick, you’re a cocksucker, you’re a faggot. I’m going to the CCRB tomorrow, so I’ll just tell them about this incident as well.” PO Podlovits went to his vehicle intending to retrieve a card since he keeps his business cards in a bag inside the vehicle. However, as § 87(2)(b) continued walking away with § 87(2)(b) and was cursing at PO Podlovits, he did not think it prudent to follow them and provide a card as they expressed a general desire to no longer interact with the police. He did not observe PO Hieronymi or Sgt. Demkiw offer their own cards or anyone request one from them. In his memo book, PO Podlovits noted, “Subject 2 § 87(2)(b) did ask for card then walked away while screaming multiple verbal slurs to undersigned while undersigned went to retrieve card.”

In Stop, Question, and Frisk report #§ 87(2)(b) prepared by PO Hieronymi regarding both stops of § 87(2)(b) and § 87(2)(b) it was indicated business cards were offered (BR 20). When presented the report during his interview, PO Hieronymi did not recall any officer ever actively offering one.

An officer is to offer a business card to a person who is subject of certain law enforcement activity, including pedestrian stops and frisks, at the conclusion of any such activity that does not result in an arrest or summons (New York City Administrative Code 14-174) (BR 28). The NYPD provides no guidance on how or where officers should carry these cards (Patrol Guide Procedure 203-09) (BR 25).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation Y – Abuse of Authority: Police Officer Austin Hieronymi failed to provide § 87(2)(b) with a business card.

Footage from Sgt. Demkiw’s BWC partially captures this allegation (BR 09). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 1:28, § 87(2)(b) asks for PO Hieronymi’s card as he walks away following the frisk. PO Hieronymi tells him he has to go find one, and § 87(2)(b) asks twice more as they both walk toward the vehicle.

Footage from exterior camera 10 at the Fine Fare Supermarket captures § 87(2)(b) and § 87(2)(b) leaving the incident location (BR 04). The durational timestamp of the video will be referenced, not the on-screen timestamp. At 24:14, PO Hieronymi and Sgt. Demkiw walk away from § 87(2)(b) to their vehicle following his frisk. § 87(2)(b) follows. At 24:22, PO Hieronymi opens the front passenger door of the vehicle, partially visible at the top of the frame, and moves either toward or inside the vehicle. Only his feet are visible below the open door. At 24:36, § 87(2)(b) approaches PO Hieronymi who moves away from the vehicle and walks to the curb with § 87(2)(b) where they appear to speak briefly. At 25:06, as § 87(2)(b) and § 87(2)(b) stand on the sidewalk apparently speaking to PO Podlovits, PO Hieronymi walks from the curb to the front passenger seat of the vehicle. At 25:16, PO Hieronymi sits in the vehicle and shuts the door. No further activity from PO Hieronymi is depicted. § 87(2)(b) and § 87(2)(b) appear to continue speaking to PO Podlovits and possibly toward the vehicle until 25:25, when they both walk away from police officers and out of frame.

§ 87(2)(b) stated that once PO Hieronymi provided his name and shield number, § 87(2)(b) told him that was not enough, and asked for a business card. PO Hieronymi did not respond and entered the driver’s seat of the vehicle. After PO Hieronymi forced him back to the sidewalk, PO Hieronymi returned to the vehicle without providing a card.

§ 87(2)(b) stated that § 87(2)(b) followed PO Hieronymi and Sgt. Demkiw from the sidewalk to their vehicle while repeatedly asking for their business cards. Neither officer provided their business cards.

As PO Hieronymi returned to the police vehicle, § 87(2)(b) asked him for a contact card. PO Hieronymi returned to the vehicle with the intention of retrieving a card, which he kept in the open compartment of the front passenger door. He stopped briefly to order § 87(2)(b) back onto the sidewalk and told him he was looking for a business card. While continuing to look for one, § 87(2)(b) and § 87(2)(b) left the scene. This indicated to PO Hieronymi that they no longer wanted any contact with the officers, thereby refusing a card, so he no longer tried to provide a card. In his memo book, PO Hieronymi noted, “While requesting a contact card upon conclusion of stop, subject walked away from police before reporting officer could retrieve one from [sic] him.”

Sgt. Demkiw did not recall if PO Hieronymi ever offered a business card or if he was ever requested to provide one. In his memo book, Sgt. Demkiw noted, “male... requested a card and walked away.”

PO Podlovits did not observe PO Hieronymi offer a business card to anyone or anyone request one from him.

In the Stop, Question, and Frisk report prepared by PO Hieronymi for the stops of § 87(2)(b) and § 87(2)(b) it was indicated business cards were offered (BR 20). When presented the report during his interview, PO Hieronymi did not recall any officer ever actively offering one.

An officer is to offer a business card to a person who is subject of certain law enforcement activity, including pedestrian stops and frisks, at the conclusion of any such activity that does not result in an arrest or summons (New York City Administrative Code 14-174). The NYPD provides no guidance on how or where officers should carry these cards (Patrol Guide Procedure 203-09).

§ 87(2)(g)

§ 87(2)(g)

Allegation Z – Discourtesy: Sergeant Thomas Demkiw acted discourteously toward § 87(2)(b)

Allegation AA – Discourtesy: Sergeant Thomas Demkiw acted discourteously toward § 87(2)(b)

Exterior security footage from a residential building located at 635-655 Morris Avenue in the Bronx captured these allegations (BR 06). The video player necessary to play that footage has no durational timestamp feature so the on-screen timestamp will be referenced. At 0:25:53.626, in camera “M1 43 Morris South C View,” § 87(2)(b) and § 87(2)(b) enter the frame on the lower left corner, walking together on a sidewalk. They walk continuously away from the camera. At 0:26:06.000, the police vehicle enters from the left of the frame and drive in the same direction as § 87(2)(b) and § 87(2)(b) driving to the end of the block at 0:26:11.635. § 87(2)(b) and § 87(2)(b) are not observed watching or reacting to the vehicle. No hand is depicted exiting the vehicle. Glare from streetlights suggest that all side windows on the passenger side are fully raised.

§ 87(2)(b) stated that he and § 87(2)(b) continued walking south on Morris Avenue after officers got back in their vehicle. They crossed East 153rd Street and as they passed by a bus stop on the opposite corner from where they were stopped, the police vehicle passed them on the same side of the street. He heard an officer honk the horn and Sgt. Demkiw, sitting in the front passenger seat, stuck his arm out of his window and flashed a middle finger at § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) stated that when the officers returned to their vehicle, they immediately made a U-turn and drove north along Morris Avenue as § 87(2)(b) and § 87(2)(b) crossed East 153rd Street and continued walking south. They did not have any further interactions with the officers.

Sgt. Demkiw stated that § 87(2)(b) and § 87(2)(b) began walking away approximately one minute after he returned to the driver’s seat. PO Podlovits reentered the backseat of the vehicle and Sgt. Demkiw drove in a direction he did not recall. He did not recall passing § 87(2)(b) and § 87(2)(b) again. He denied that any officer displayed their middle finger out of the vehicle at them. When presented the above-referenced footage, Sgt. Demkiw identified his own vehicle as driving southbound from the scene of the stop, passing by § 87(2)(b) and § 87(2)(b) and reiterated no officer ever put their middle finger out of the vehicle.

PO Hieronymi recalled PO Podlovits was the last officer to reenter the vehicle after concluding his discussion with § 87(2)(b) and he and § 87(2)(b) walked southbound away from the scene. Sgt. Demkiw pulled away from the scene and passed § 87(2)(b) and § 87(2)(b) soon after. There was no further interaction between them and officers. PO Hieronymi denied any officer sticking their middle finger out of the window.

PO Podlovits denied any officer put their middle finger out of the moving vehicle when passing by § 87(2)(b) and § 87(2)(b) after the stop concluded.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the fifth CCRB complaint to which § 87(2)(b) has been party and has been named as a victim in fifteen other allegations (BR 29):
 - § 87(2)(b)
 -
 -
- This is the third CCRB complaint to which § 87(2)(b) has been party and has been named as a victim in one other allegation (BR 30):
 - § 87(2)(b)
- Sgt. Demkiw has been a member of service for 12 years and has been subject of 10 other allegations in six other CCRB complaints, two of which were substantiated (see officer history):
 - 200818332 involved a substantiated allegation of a stop. The Board recommended Charges and the NYPD imposed no discipline due to the statute of limitations.
 - 201706461 involved a substantiated allegation of force with a vehicle. The Board recommended Charges and the NYPD is yet to impose discipline.
 - § 87(2)(g)
- PO Hieronymi has been a member of service for five years and has been subject of three other allegations in two other CCRB complaints with no substantiations (see officer history):
 - § 87(2)(g)
- PO Podlovits has been a member of service for five years and has been subject of nine other allegations in three other CCRB complaints with no substantiations (see officer history):
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming unlawful stop and frisk, failure to intervene, negligent hiring, negligent retention, negligent discipline, negligent training, negligent supervision, prima facie tort, illegal search, respondent

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____